

MONTANA LEGISLATIVE HISTORY

Chapter 305 1999
 Bill H _____ S 153

Original bill & history ☒ c

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 The bill is
 126 pages. If
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H. Committee on Judiciary
 Hearing Date(s) 3-10 ☒ c
3-25 ☒ c
 _____ c
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 _____ c
 Date Out _____ c

S. Committee on Judiciary
 Hearing Date(s) 2-12 ☒ c
2-15 ☒ c
 _____ c
 _____ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

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1
2 INTRODUCED BY

(Primary Sponsor)

Senate BILL NO. 153

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE PROVISIONS OF THE UNIFORM
5 COMMERCIAL CODE GOVERNING SECURED TRANSACTIONS; REPLACING ARTICLE 9 OF THE UNIFORM
6 COMMERCIAL CODE WITH THE MOST RECENT VERSION OF ARTICLE 9 OF THE UNIFORM
7 COMMERCIAL CODE; AMENDING SECTIONS 2-6-109, 7-4-2631, 25-10-302, 30-1-105, 30-1-201,
8 30-1-206, 30-2-103, 30-2-210, 30-2-326, 30-2-502, 30-2-716, 30-2A-103, 30-2A-303, 30-2A-307,
9 30-2A-309, 30-4-208, 30-7-503, 30-8-113, 30-8-116, 30-8-120, 30-8-331, 30-8-332, 30-8-510,
10 40-5-242, 40-5-248, 69-8-503, 70-24-430, 71-3-125, 71-3-205, 71-3-206, 71-3-408, 71-3-704,
11 71-3-713, 71-3-808, AND 71-3-908, MCA; REPEALING SECTIONS 30-9-102, 30-9-103, 30-9-104,
12 30-9-105, 30-9-106, 30-9-107, 30-9-108, 30-9-109, 30-9-110, 30-9-112, 30-9-113, 30-9-114,
13 30-9-115, 30-9-116, 30-9-201, 30-9-202, 30-9-203, 30-9-204, 30-9-205, 30-9-206, 30-9-207,
14 30-9-208, 30-9-301, 30-9-302, 30-9-303, 30-9-304, 30-9-305, 30-9-306, 30-9-307, 30-9-308,
15 30-9-309, 30-9-310, 30-9-311, 30-9-312, 30-9-313, 30-9-314, 30-9-315, 30-9-316, 30-9-317,
16 30-9-318, 30-9-401, 30-9-402, 30-9-403, 30-9-404, 30-9-405, 30-9-406, 30-9-407, 30-9-409,
17 30-9-410, 30-9-411, 30-9-412, 30-9-421, 30-9-423, 30-9-431, 30-9-432, 30-9-501, 30-9-502,
18 30-9-503, 30-9-504, 30-9-505, 30-9-506, 30-9-507, 30-9-508, AND 30-9-511, MCA; AND PROVIDING
19 A DELAYED EFFECTIVE DATE."

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22
23 NEW SECTION. Section 1. Definitions and index of definitions. (1) As used in [sections 1 through
24 125], the following definitions apply:

25 (a) "Accession" means goods that are physically united with other goods in such a manner that
26 the identity of the original goods is not lost.

27 (b) (i) "Account", except as used in "account for", means a right to payment of a monetary
28 obligation, whether or not earned by performance:

29 (A) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed
30 of;

HISTORY AND FINAL STATUS 1999

2/06	Tabled in Committee		
3/26	Missed Deadline for Appropriation Bill Transmittal		
SB 151	Introduced by Toews	LC0002 Drafter: Petesch	
Clarify That the Retirement Levy for a Community College District May Be Imposed Only on Property Within the Community College District;...			
1/06	Introduced and 1st Reading		
1/06	Referred to Education and Cultural Resources		
1/06	Fiscal Note Requested		
1/08	Fiscal Note Received		
1/09	Fiscal Note Signed		
1/11	Fiscal Note Printed		
1/15	Hearing		
1/21	Committee Executive Action--Bill Passed	10	0
1/21	Committee Report--Bill Passed		
1/25	2nd Reading Passed	50	0
1/26	3rd Reading Passed	49	0
Transmitted to House			
2/16	Referred to Taxation		
3/03	Hearing		
4/08	Committee Executive Action--Bill Concurred	19	1
4/08	Committee Report--Bill Concurred		
4/10	2nd Reading Concurred	94	0
4/12	3rd Reading Concurred	98	0
Returned to Senate			
4/12	Sent to Enrolling		
4/13	Returned from Enrolling		
4/14	Signed by President		
4/15	Signed by Speaker		
4/15	Transmitted to Governor.		
4/20	Signed by Governor		
4/22	Chapter Number Assigned		
	Chapter Number 379		
	Effective Date: 4/20/1999 - All Sections		
SB 152	Introduced by Wells, et al.	LC0760 Drafter: Fox	
Declare That the Right of Parents to Direct the Upbringing of Their Children is a Fundamental Right;...			
1/06	Introduced and 1st Reading		
1/06	Referred to Judiciary		
1/12	Hearing		
1/19	Tabled in Committee		
3/01	Missed Deadline for General Bill Transmittal		
SB 153	Introduced by Halligan	LC0883 Drafter: Petesch	
Generally Revise Provisions of the Uniform Commercial Code Governing Secured Transactions;...			
1/06	Introduced and 1st Reading		
1/06	Referred to Judiciary		
2/12	Hearing		

SENATE BILLS AND RESOLUTIONS

2/15	Committee Executive Action--Bill Passed as Amended	8
2/16	Committee Report--Bill Passed as Amended	
2/17	2nd Reading Passed	50
2/18	3rd Reading Passed	47
	Transmitted to House	
2/20	Referred to Judiciary	
3/10	Hearing	
3/26	Committee Executive Action--Bill Concurred as Amended	16
3/27	Committee Report--Bill Concurred as Amended	
3/29	2nd Reading Concurred	86
3/30	3rd Reading Concurred	82
	Returned to Senate with Amendments	
4/07	2nd Reading House Amendments Concurred	49
4/08	3rd Reading Passed as Amended by House	49
4/08	Sent to Enrolling	
4/12	Returned from Enrolling	
4/12	Signed by President	
4/12	Signed by Speaker	
4/13	Transmitted to Governor	
4/14	Signed by Governor	
4/15	Chapter Number Assigned	
	Chapter Number 305	
	Effective Date: 7/01/2001 - All Sections	
SB 154	Introduced by Mohl	LC0749 Drafter: K...
Eliminate the Restriction That the Long Semitrailer Cargo Unit of a Road Mountain Double Vehicle Combination May Not Exceed 48 Feet in Length;...		
11/30	Fiscal Note Needed	
1/07	Introduced and 1st Reading	
1/07	Referred to Highways and Transportation	
2/02	Hearing	
2/03	Committee Executive Action--Bill Passed	10
2/03	Committee Report--Bill Passed	
2/05	2nd Reading Passed	48
2/06	3rd Reading Passed	45
	Transmitted to House	
2/16	Referred to Transportation	
3/05	Hearing	
3/15	Committee Executive Action--Bill Concurred as Amended	17
3/15	Committee Report--Bill Concurred as Amended	
3/26	2nd Reading Concurred	94
3/27	3rd Reading Concurred	91
	Returned to Senate with Amendments	
3/30	2nd Reading House Amendments Concurred	50
3/31	3rd Reading Passed as Amended by House	47
4/01	Sent to Enrolling	
4/06	Returned from Enrolling	
4/08	Signed by President	
4/09	Signed by Speaker	
4/09	Transmitted to Governor	
4/16	Signed by Governor	

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (S) Judiciary -

04:57 PM

-
- SB 87** **SPONSOR:** Hargrove, Don **SHORT TITLE:** Revise snowmobile safety act
 REFERRED ON: 01/04/1999 **HEARD ON:** 01/11/1999
 EXECUTIVE ACTION: 01/15/1999 Bill Passed as Amended -- VOTE: 7 - 0
 FINAL DISPOSITION 03/24/1999 Chapter Number Assigned
-
- SB 112** **SPONSOR:** Franklin, Eve **SHORT TITLE:** Revise laws governing identification of criminal offenders
 BY REQUEST OF: Department Of Justice
 REFERRED ON: 01/04/1999 **HEARD ON:** 01/07/1999
 EXECUTIVE ACTION: 01/15/1999 Bill Passed -- VOTE: 6 - 0
 FINAL DISPOSITION 03/24/1999 Chapter Number Assigned
-
- SB 124** **SPONSOR:** Beck, Tom **SHORT TITLE:** Generally revise laws relating to mental health
 BY REQUEST OF: Department Of Public Health And Human Services
 REFERRED ON: 01/04/1999 **HEARD ON:** 01/12/1999
 EXECUTIVE ACTION: 01/15/1999 Bill Passed as Amended -- VOTE: 6 - 0
 FINAL DISPOSITION 04/06/1999 Chapter Number Assigned
-
- SB 128** **SPONSOR:** Christiaens, Chris **SHORT TITLE:** Make permanent the Montana Living Trust Act
 BY REQUEST OF: State Auditor
 REFERRED ON: 01/04/1999 **HEARD ON:** 01/18/1999
 EXECUTIVE ACTION: 01/22/1999 Bill Passed -- VOTE: 9 - 0
 FINAL DISPOSITION 03/24/1999 Chapter Number Assigned
-
- SB 152** **SPONSOR:** Wells, Jack **SHORT TITLE:** Right of parents to direct upbringing of children as a fundamental right
 REFERRED ON: 01/06/1999 **HEARD ON:** 01/12/1999
 TABLED ON: 01/19/1999
 FINAL DISPOSITION 03/01/1999 (S) Missed Deadline for General Bill Transmittal
-
- SB 153** **SPONSOR:** Halligan, Mike **SHORT TITLE:** Generally revise provisions of the UCC governing secured transactions
 REFERRED ON: 01/06/1999 **HEARD ON:** 02/12/1999
 EXECUTIVE ACTION: 02/15/1999 Bill Passed as Amended -- VOTE: 8 - 0
 FINAL DISPOSITION 04/15/1999 Chapter Number Assigned
-

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on February 12, 1999 at 8:00 A.M., in Room 108 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 153, SB 402, SB 403,
2/9/1999
Executive Action: SB 16, SB 243, SB 303, SB 237,
SB 357, SB 363, SB 251

EXECUTIVE ACTION ON SB 243 AND 250

Discussion:

CHAIRMAN GROSFIELD explained that SB 243 and SB 250 were passed out of Committee several days ago but he has not signed the standing committee report. Senate Bill 250 was sponsored by SEN. BARTLETT and repeals the sections of law which were held to be

over an ever-shrinking pie. It is unfortunate that this legislation needs to be before us. It is brought about by the forces that are shrinking the pie that is available to pay the medical providers. If the lawyer does not become involved, the medical providers will not be paid. He added that SEN. BARTLETT'S amendments put the onus back on the person who has caused the problem for the claimant and the hospital in the first place.

Vote: The motion carried with SEN. HOLDEN voting no - 8-1.

{Tape : 1; Side : B; Approx. Time Counter : 9.07}

HEARING ON SB 153

Sponsor: SEN. MIKE HALLIGAN, SD 34, Missoula

Proponents: Joe Mazurek, Attorney General
Dan Whyte, Chief Legal Counsel, Office of the
Secretary of State
John Cadby, Montana Bankers Association
Bob Pyfer, Montana Credit Union League

Opponents: None

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, Missoula, introduced SB 153 which revises Article 9 of the UCC to help the business community, in a uniform manner, to purchase, sell, or exchange products all across the nation in a way that is efficient and productive. Article 9 has not been looked at in a comprehensive manner, or changed, since 1972. Senate Bill 153 is intended to bring Article 9, which is widely and regularly used by the business community, up to date in regard to all the electronic filing and other electronic aspects of doing business, such as using the internet, in preparation for the 21st century. Essentially SB 153 takes many of the definitions, etc., spread throughout the code, and puts them into the first 15 or 20 pages.

Proponents' Testimony:

Joe Mazurek, Attorney General, appeared as a Commissioner by appointment of Legislative Services Division to serve as a member of the National Conference of Commissioners on Uniform State Law (The Uniform Conference). He explained that the Uniform Conference is an organization of states formed over 100 years ago. It is a states' rights organization formed primarily to reserve for the states the ability to control laws which apply

within their borders, rather than have those functions taken over solely by the federal government. He indicated that the uniform commercial code is the best example of that. Although the U.S. Congress develops the rules governing commerce, the Uniform Conference is an attempt by the states to reserve the ability to protect themselves by participating in the development of these laws.

It is appropriate to have uniform and consistent laws to govern such things as commerce. Montana has adopted the 2nd most uniform act of any state in the country, partially because of the process we go through. When an idea for a law is proposed, it may be brought before the uniform conference which will study the idea, appoint a drafting committee, debate the issue, and ultimately submitted it for a vote by the states. Two thirds of the states must vote for adoption, before it becomes a product. It is submitted to the American Bar Assn. and the American Law Institute for review, and then proposed to the state legislatures for enactment. The UCC governs all business transactions such as sale of goods, banking practices, letters of credit, securities, and secured transactions.

This area deals with the manufacturer who may be financing equipment, a retailer financing their inventory with a loan, and consumer credit for such things as appliances or other consumer goods. All of these types of transactions involve a financing statement, and a lender who takes a security interest in the collateral. Article 9 has often been thought of as the crankshaft of the economic engine of our country.

Many of the issues this legislature is dealing with are efforts to stimulate our state's economy, and it is important to remember that for economic incentives to work, we must have a consistent system of rules for involved parties to use. Senate Bill 153 represents a massive effort by the uniform law conference to update Article 9 of the UCC. There is a comprehensive national effort to get this act adopted and effective by the year 2001.

The act was finalized last fall, and has been brought forward this session so that it can be reviewed by the legislature while still allowing time to make necessary changes or revisions before the next session.

Attorney General Mazurek handed out fact sheets which explained the bill **EXHIBIT(5)**, **EXHIBIT(6)**, and **EXHIBIT(7)**. Our neighboring states are also introducing the bill this year. He explained that this bill is an attempt to bring Article 9 into our new technology. It's meant to deal with the technology of electronic transactions, and also, because of our growing economy, the increasing volume of transactions. There are many new kinds of

collateral that didn't exist before. Deposit accounts and health insurance receivables are examples.

In an attempt to have consistency throughout the states, this bill deals with the way certain products are treated. In Montana and a few other states, agricultural (non-bank) suppliers have been given special treatment. If a mortgage lender finances the on-going operation of a farm or ranch, they not only have a security in the land and buildings, but perhaps in the crops as well. In Montana, there is a provision where someone who sells seed can get a priority lien, even though the bank has a general lien on the property. This bill changes that rule, but is consistent with the overall scheme which is that anyone who has notice of the existence of a lien, by checking the central filing system in the Secretary of States's Office and advances money or product to plant crops or something similar, will take it subject to that under-riding mortgage.

There are two key concepts in the way the lending process works. One is if a banker advances money to a customer to purchase equipment, they enter into a security agreement resulting in a lien being attached to the property. This lien is not good for the rest of the world until it is filed. Article 9 relies on filing of the public record to make that security interest effective and notifying the world that the lending institution has a security interest in that property.

Attorney General Mazurek further pointed out that this is a very complex and lengthy bill. The scope of the article is expanded to include new types of collateral which can be taken by a creditor. This is largely due to changes in our economy and the types of products that are out there. Non-possessory statutory agricultural liens will come under Article 9 for perfection and priority. The way in which perfection (how you security agreement stands up against others) is achieved, is changed slightly in that you now have to protect it by filing in one central location. In Montana and some other states, that is the Secretary of State's Office. Some sates have retained the requirement that you have to file in every county. Usually lenders will voluntarily file in every county, but it will not be required in Montana.

A lot of transactions cross state lines. Formerly, the state where the collateral was found was the law that applied, but under this new rule, the focus is on the state in which the debtor is located. Often, collateral moves, so now a security interest needs only to be filed in the state where the debtor lives, or the home state of the corporation. This insures the lender that the security interest is in place and valid. He emphasized the full commitment to a central filing system, so

that every creditor and every debtor knows they can look to see if there is a security interest on file, and that is the Secretary of State's Office.

One of the difficulties of this process in the past was that there was no provision in Article 9 for protection of the consumer. This has been addressed with a number of consumer protection initiatives in the bill. For example, it provides a consumer the right to redeem merchandise that has been repossessed by the merchant for non-payment, if the consumer makes full payment. A consumer is entitled to know up front that if they default, the amount of the deficiency that would be assessed against them, and how that would be calculated. A secured creditor or lender cannot accept collateral as partial satisfaction. If the merchandise is repossessed, it must be considered as full satisfaction for the consumer obligation. These are certainly modest consumer protection initiatives, but at least Article 9 will have them now.

There are also some requirements in terms of default. If there are a number of lenders who have filed security interests against a business or individual, the first one to file still has the first right to the security, but all other creditors must be made aware that that collateral is no longer available.

Mr. Mazurek emphasized that in the process of drafting these revisions at the national level, it has gone through review by major manufacturing organizations, major lending organizations and consumer organizations. If passed in this session, the law would be available in time to allow transition particularly to the new filing requirements.

Dan Whyte, Chief Legal Counsel, Office of the Secretary of State, explained that their office is the filing office for all financing statements from banks or other lending institutions that are covered under SB 153. This includes agricultural liens, which at one time were filed at the county level.

When the Secretary of State's Office receives a financing statement for filing, they scrutinize it relative to a laundry list of items which must be on that statement such as names of debtors, collateral, and various other information. The trend throughout the nation is for the filing offices to go to an "open drawer" policy, which means if a filing meets minimum requirements, it is accepted, and kept in an "open drawer". The reasons allow for less discretion for rejection by the filing office. These minimum requirements are name of debtor, name of creditor, and description of collateral. If found on the statement, the Secretary of State's office keeps the documents and provides information relative to that to anyone on that

statement who wants information. In turning to this type of policy, the Secretary of State's Office is currently building a new UCC financing statement computer system which allows greater capacity for searches and allows more ease of filing by those filing the document and by the Secretary of State's Office. Document imaging is anticipated, as well as internet access to the system in the future.

{Tape : 2; Side : A; Approx. Time Counter : 9.31}

Section 86(2) has additional optional requirements for financing statements which includes address of the creditor, detailed descriptions of collateral, how a debtor should be named, etc.

He referred to amendments proposed by the Secretary of State, **EXHIBIT(8)**. Amendment 1 requires some additional information for a specific amendment to a financing statement. This would include the name of debtor and creditor.

Amendments 2 thru 4 clarify the distinction between what documents must be rejected under Section 72 and what documents may be rejected under Section 86(2) of this bill.

Amendment 5 considers the state requirements for records management and incorporates Title 2 requirements for records management in this bill.

Amendment 6 discusses what medium the Secretary of State's Office must provide for information requests. They can provide any reasonable form to anyone requesting the same.

Amendment 7 refers to the portion of the current Article 9 that allows the Secretary of State's Office to reject bogus filings. They would like this kept in the statute.

John Cadby, Montana Bankers Association, explained that their counsel has read the document and has concerns with the massive changes incorporated. However, they have two years to educate lenders across the state before it takes effect in July of 2001. If there are problems, they will be able to address the same before the effective date. He added that Montana was the first state in the nation to adopt centralized filing for agriculture liens.

Bob Pyfer, Montana Credit Union League, related that he reviewed the provisions that apply to consumer lending. It appears that this will fill in some gaps and codify some details. Forms are also provided. He has some questions and does appreciate the July 1, 2001 delayed effective date. He plans to urge their national association to appoint a committee of lawyers and credit

union operational personnel to study the new Article 9 from the credit union perspective. If changes are needed, they can be presented at the next legislative session.

Opponents' Testimony: None.

{Tape : 2; Side : A; Approx. Time Counter : 9.40}

Questions from Committee Members and Responses:

SEN. BARTLETT questioned the amount of revenue a centralized filing system for all UCC's would produce. She further questioned what UCC filings were centralized at this point. Mr. Whyte responded that currently any financing statement that a creditor would want filed for priority purposes would be filed in their office.

Tanna Gormely, Secretary of State's Office, explained that an agricultural piece of equipment dealing with an irrigation sprinkler system that is fixed to the ground would be filed at the county level and not necessarily with their office.

SEN. BARTLETT asked for a comparison of filings on agricultural collateral between the Secretary of State's Office and the counties. Ms. Gormely responded that they have the bulk of the filings.

SEN. BARTLETT further questioned whether there were other UCC filings that must be centrally filed at this time. Ms. Gormely explained this would include notices of federal tax liens. There was a provision to have notices of child support liens filed with their office and they do have the commercial UCC liens on file.

SEN. BARTLETT questioned whether the commercial UCC filings were required by law to be at the Secretary of State's Office. Ms. Gormely affirmed that they were with the exception of consumer goods and real estate liens and fixture filings that were filed at the local level. The largest portion of liens would be filings of household items to include refrigerators, stoves, furnishings, etc.

SEN. BARTLETT requested that the Committee be provided the amount of additional revenue that would be provided by centralized filing. Mr. Whyte agreed to provide the information.

SEN. BARTLETT questioned the amount of filings being made at the county level now that would change to the state level under this legislation. She raised a concern regarding the revenue that may be lost to the counties. If the amount is insignificant, that is

all the information that was needed. She further asked that the information be provided for a variety of counties. When agricultural lien filings were centralized, the revenue lost to counties varied dramatically from county to county. **Robert Throssell, Montana Association of Clerks and Recorders**, agreed to poll the members and provide the information.

SEN. MCNUTT asked if the bill required more centralized filing or whether it simply streamlined the method of filing. **Attorney General Mazurek** responded that any personal property that is fixed to real property requires filing at the local levels. Filing is mostly centralized at the present time but for precautionary reasons duplicate filings are also made locally even though this is not required.

SEN. JABS questioned whether the only official filing would be at the Secretary of State's Office. **Attorney General Mazurek** affirmed. In order to properly effect a security interest in the case of other than fixture filings, the filing would need to be made at the Secretary of State's Office. The duplicate filing at the county level would be notice to other local persons. It would not be required nor would it be valid if this is the only place of filing.

CHAIRMAN GROSFIELD observed that in Section 95 on page 79 there were blank spaces for amounts of fees. He questioned the amount of the fees and also whether there may be CI-75 implications to the fees. **Mr. Whyte** explained that the fees are either required by statute or in administrative rules. He added that the CI-75 bill addressed the fees.

Closing by Sponsor:

SEN. HALLIGAN remarked that with paper giving way to electronic means of filing, it is important to take the major steps toward helping businesses through uniformity. The financial institutions as well as consumer and business groups will have two years to take a close look at the issues.

{Tape : 2; Side : A; Approx. Time Counter : 10.05}

HEARING ON SB 402 AND SB 403

Sponsor: **SEN. BARRY "SPOOK" STANG, SD 36, St. Regis**

Proponents: **Dorris Novak, Legacy Legislator**
Verner Bertelsen, Montana Senior Citizens
Association
Bill Olson, AARP

Everyone agreed that the statute is not clear. The question is whether it should be made clear that the judge can order a new trial or whether it should be made clear that the judge cannot order a new trial. The legislation, SB 416, is drafted to give the court the discretion.

Proponents' Testimony: None.

Opponents' Testimony: None.

{Tape : 1; Side : A; Approx. Time Counter : 10.43}

Questions from Committee Members and Responses:

SEN. DOHERTY added that he had recently submitted a brief to the Supreme Court dealing with the insertion of language in a workers' compensation case.

SEN. HALLIGAN remarked that he would rather have this handled by motion and hearing rather than having judges be activists.

SEN. GROSFIELD related that in the Brummer case, the judge ordered a new trial before anyone had an opportunity to make a motion.

SEN. DOHERTY stated that prior to the verdict, the judge has the authority to declare a mistrial with or without a motion. The question is whether the judge should have that authority after the verdict.

Closing by Sponsor:

SEN. GROSFIELD closed on SB 416.

{Tape : 1; Side : B; Approx. Time Counter : 10.52}

EXECUTIVE ACTION ON SB 153

Motion/Vote: SEN. HALLIGAN moved that SB 153 BE AMENDED - SB015301.agp, EXHIBIT(1). The motion carried unanimously.

Motion: SEN. HALLIGAN moved that SB 153 DO PASS AS AMENDED.

Discussion:

SEN. MCNUTT remarked that the priority would be changing on lien input commodities in agriculture such as fuel, fertilizer, and seed. This will cause a lot of concern in the agricultural community.

SEN. HALLIGAN didn't think the priority would change. This addresses a perfected security in crops growing on real property over a conflicting interest of an encumbrancer or owner.

CHAIRMAN GROSFIELD remarked that the delayed effective date is very important on a bill of this size which affects many transactions around the state. The business world has two years to study the changes before they go into effect. This is a responsible approach.

Vote: The motion carried unanimously - 8-0.

{Tape : 1; Side : B; Approx. Time Counter : 11:00}

EXECUTIVE ACTION ON HB 41

CHAIRMAN GROSFIELD remarked that this involves 5 FTEs. There are two other CI-75 bills that went along with this bill and were tabled in the House. The question is whether or not a CI-75 ballot issue is necessary under this bill. His sense is that it is. **Greg Petesch, Legislative Services Division**, prepared a brief which states that it is required. In the testimony offered by the Chief Justice, he stated that he believes that it is exempt from CI-75 for the reason that the great majority of surcharges are found in criminal prosecutions both in district courts and courts of limited jurisdiction. This means that all are not included. Some of them may require a vote of the people.

The bill could be tabled, waiting for action from the House. Another option would be to pare it down so it only covers criminal surcharges.

SEN. DOHERTY questioned why the House didn't pass the bills. They are relying on the opinion of one of seven justices at the Supreme Court. He is in favor of the bill and continuing the surcharge.

SEN. HALLIGAN maintained that the CI-75 language clearly stated that civil fines and penalties are excluded from CI-75. A surcharge may cause a problem. He didn't believe this could cover only a part of the surcharges. There is a lot of revenue generated from civil cases. Since the Committee's Chief Legal Counsel has stated that this needs voter approval, the Committee could be sued if they are disregarding that opinion. It would be prudent to have the House send the other bills to the Senate.

CHAIRMAN GROSFIELD related that the bill could be tabled with a message sent to the House Committee that this Committee is

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (H) Judiciary -

04:00 PM

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- SB 63** **SPONSOR:** Nelson, Linda **SHORT TITLE:** Revise sexual and violent offender registration laws
 BY REQUEST OF: Board Of Crime Control
 REFERRED ON: 01/19/1999 **HEARD ON:** 03/03/1999
 EXECUTIVE ACTION: 03/08/1999 Bill Concurred as Amended -- VOTE: 15 - 5
 FINAL DISPOSITION 04/06/1999 Chapter Number Assigned
-
- SB 65** **SPONSOR:** Shea, Debbie **SHORT TITLE:** Revise laws governing possession of weapon on school property
 BY REQUEST OF: Department Of Justice
 REFERRED ON: 01/30/1999 **HEARD ON:** 02/11/1999
 FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee
-
- SB 87** **SPONSOR:** Hargrove, Don **SHORT TITLE:** Revise snowmobile safety act
 REFERRED ON: 02/16/1999 **HEARD ON:** 03/04/1999
 EXECUTIVE ACTION: 03/09/1999 Bill Concurred -- VOTE: 15 - 5
 FINAL DISPOSITION 03/24/1999 Chapter Number Assigned
-
- SB 112** **SPONSOR:** Franklin, Eve **SHORT TITLE:** Revise laws governing identification of criminal offenders
 BY REQUEST OF: Department Of Justice
 REFERRED ON: 02/16/1999 **HEARD ON:** 03/04/1999
 EXECUTIVE ACTION: 03/08/1999 Bill Concurred as Amended -- VOTE: 19 - 1
 FINAL DISPOSITION 03/24/1999 Chapter Number Assigned
-
- SB 128** **SPONSOR:** Christiaens, Chris **SHORT TITLE:** Make permanent the Montana Living Trust Act
 BY REQUEST OF: State Auditor
 REFERRED ON: 02/16/1999 **HEARD ON:** 03/03/1999
 EXECUTIVE ACTION: 03/03/1999 Bill Concurred as Amended -- VOTE: 18 - 2
 FINAL DISPOSITION 03/24/1999 Chapter Number Assigned
-
- SB 153** **SPONSOR:** Halligan, Mike **SHORT TITLE:** Generally revise provisions of the UCC governing secured transactions
 REFERRED ON: 02/20/1999 **HEARD ON:** 03/10/1999
 EXECUTIVE ACTION: 03/26/1999 Bill Concurred as Amended -- VOTE: 16 - 3
 FINAL DISPOSITION 04/15/1999 Chapter Number Assigned
-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN ROBERT C. CLARK, on March 10, 1999 at 8:00 A.M., in Room 312 - 2 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 190, SB 153, SB 232, SB 171, 3/2/1999

Executive Action: SB 250-Tabled, SB 243-Be
Concurred in as Amended

HEARING ON SB 190

Sponsor:

Senator Halligan presented SB 190.

{Tape : 1; Side : A; Approx. Time Counter : 26 - 38}

Proponents:

Greg Petesch, Code Commissioner

{Tape : 1; Side : A; Approx. Time Counter : 38 - 53}

Opponents:

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 53 - 166}

Closing by Sponsor:

Senator Halligan made closing statements.

{Tape : 1; Side : A; Approx. Time Counter : 166 - 183}

HEARING ON SB 153

Sponsor:

Senator Halligan presented SB 153.

{Tape : 1; Side : A; Approx. Time Counter : 183 - 240}

Proponents:

Joe Mazurek, Attorney's General Office

{Tape : 1; Side : A; Approx. Time Counter : 240 - 443}

EXHIBIT(1)

EXHIBIT(2)

EXHIBIT(3)

Dan White, Secretary of State, Legal Council

{Tape : 1; Side : A; Approx. Time Counter : 443 - 550}

{Tape : 1; Side : B; Approx. Time Counter : 0 - 28}

John Cadby, Montana Banker's Association
{Tape : 1; Side : B; Approx. Time Counter : 28 - 45}
Bob Pfeiffer, Montana Credit Union League
{Tape : 1; Side : B; Approx. Time Counter : 45 - 75}
Keith Colbo, Montana Independent Bankers Association
{Tape : 1; Side : B; Approx. Time Counter : 75 - 83}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 83 - 436}

Closing by Sponsor:

Senator Halligan made closing statements.
{Tape : 1; Side : B; Approx. Time Counter : 436 - 550}

HEARING ON SB 232

Sponsor:

Senator DePratu presented SB 232.
{Tape : 2; Side : A; Approx. Time Counter : 0 - 22}

Proponents:

George Bennett, Montana Banker's Association
{Tape : 2; Side : A; Approx. Time Counter : 22 - 86}
EXHIBIT(4)
EXHIBIT(5)
EXHIBIT(6)

Gerald Kreig, Attorney
{Tape : 2; Side : A; Approx. Time Counter : 86 - 151}
Bob Pfeiffer, Montana Credit Union Leagues
{Tape : 2; Side : A; Approx. Time Counter : 151 - 163}
Keith Colbo, Montana Independent Bankers Association
{Tape : 2; Side : A; Approx. Time Counter : 163 - 167}
John Cadby, Montana Bankers Association
{Tape : 2; Side : A; Approx. Time Counter : 167 - 180}

EXECUTIVE ACTION ON SB 153

Motion: REP. YOUNKIN moved that SB 153 BE CONCURRED IN.

EXHIBIT(5)

Motion/Vote: REP. SHOCKLEY moved that SB 153 BE AMENDED. Motion carried 18-2 with Jore and McGee voting no.

Motion/Vote: REP. YOUNKIN moved that SB 153 BE CONCURRED IN AS AMENDED. Motion carried 16-4 with R. Clark, Curtiss, Jore, and McGee voting no on a voice vote.

{Tape : 1; Side : B; Approx. Time Counter : 346 - 550}

{Tape : 2; Side : A; Approx. Time Counter : 0 - 73}

EXECUTIVE ACTION ON SB 251

Motion: REP. SHOCKLEY moved that SB 251 BE CONCURRED IN.

Motion/Vote: REP. WILLIAMS moved that SB 251 BE AMENDED. Motion carried 19-1 with Jore voting no.

Motion/Vote: REP. GALLUS moved that SB 251 BE CONCURRED IN AS AMENDED. Motion carried 19-1 with Jore voting no.

{Tape : 2; Side : A; Approx. Time Counter : 73 - 150}

EXECUTIVE ACTION ON SB 236

Motion: REP. ANDERSON moved that SB 236 BE CONCURRED IN.

Motion: REP. JORE moved that SB 236 BE AMENDED.

Substitute Motion/Vote: REP. YOUNKIN made a substitute motion SB 236-AMENDMENT. Substitute motion failed 7-13 with Anderson, P. Clark, Curtiss, Eggers, Facey, Gutsche, Hurdle, Jore, Kitzenberg, McGee, Wyatt, Molnar, and Soft voting no.

(returned back to the JORE amendment)

Jore AMENDMENT failed on a voice vote.

Motion/Vote: REP. ANDERSON moved that SB 236 BE CONCURRED IN.

Motion carried 17-3 with R. Clark, Curtiss, and Jore voting no.

{Tape : 2; Side : A; Approx. Time Counter : 150 - 550}

{Tape : 2; Side : B; Approx. Time Counter : 0 - 133}

EXECUTIVE ACTION ON SB 257

Motion: REP. YOUNKIN moved that SB 257 BE CONCURRED IN.

Motion/Vote: REP. SHOCKLEY moved that SB 257 BE AMENDED. Motion failed 1-19 on a voice vote.